

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Aaron Olson,

Plaintiff,

v.

ORDER

Civil No. 12-218 ADM/TNL

James Counts,

Defendant.

Aaron Olson, pro se.

This matter is before the undersigned United States District Judge for a ruling on Plaintiff Aaron Olson's ("Olson") Motion to Withdraw Action Without Prejudice, or in the alternative, Partial Objection and Motion for Time Extension [Docket No. 5] (the "Motion"). Olson objects to Magistrate Judge Tony N. Leung's February 17, 2012 Report and Recommendation [Docket No. 4] (the "R&R"). In the R&R, Judge Leung recommends denying Olson's Application to Proceed in District Court Without Prepaying Fees or Costs [Docket No. 2] (the "IFP Application"), and dismissing the action as frivolous and for failure to state a claim upon which relief may be granted. Based on a de novo review of the record, the R&R is adopted, the IFP Application is denied, and the action is dismissed.

On June 17, 2011, Olson commenced a separate pro se action¹ against the "United States Social Security Department" alleging his Social Security benefits were denied in violation of his constitutional rights. Judge Leung denied Olson's first IFP Application in that case and ordered

¹ Aaron Olson v. Commissioner of the United States Social Security Administration, Civil No. 11-1596 ADM/TLN.

him to file an Amended Complaint by July 20, 2011. Olson did not comply with the deadline and Judge Leung recommended dismissing the case for failure to prosecute. Later, this Court, assigned as the District Judge in case 11-1596 ADM/TNL, received an email from the coordinator of the *Pro Se* Project informing the Court that Olson might begin participation in that program. Shortly thereafter, an attorney appeared in that matter on behalf of Olson. In light of those circumstances, Olson was granted leniency and his second IFP Application in that case was granted and the filing of his Amended Complaint was allowed. An Order to that effect issued on November 11, 2011.

On January 27, 2012, Olson, again acting pro se, commenced the present action against Defendant James Counts (“Counts”), presumably Olson’s Social Security case worker, asserting a Bivens claim. As Judge Leung noted, Olson cannot assert a Bivens claim against Counts because Congress has provided a remedy for denial of Social Security benefits through 42 U.S.C. § 405(g). See Schweiker v. Chilicky, 487 U.S. 412, 420–23 (1988); Goodale v. Halter, 257 F.3d 771, 772 (8th Cir. 2001). Were this action to proceed, Olson, as a pro se party, would receive liberal construction of his Complaint. That liberal construction would result in an action entirely duplicative of the other case where Olson is represented by counsel. Therefore, this case is duplicative litigation and warrants dismissal.

In his Motion, Olson avers his attorney in the other case will not represent him should the two cases be consolidated, and therefore asks for leave to dismiss the case without prejudice. The two cases, however, will not be consolidated. This case is merely duplicative of the other, and is dismissed. In light of that disposition, Olson’s request for an extension of time is moot.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED that:

1. Olson's Motion to Withdraw Action Without Prejudice, or in the alternative, Partial Objection and Motion for Time Extension [Docket No. 5] is **OVERRULED** and **DENIED**;
 2. Judge Leung's R&R [Docket No. 4] is **ADOPTED**;
 3. Olson's IFP Application [Docket No. 2] is **DENIED**; and
 4. All claims in the Complaint [Docket No. 1] are **DISMISSED WITH PREJUDICE**.
- LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: April 23, 2012.